

## CHAPTER 6: PROCESSING FINAL APPLICATIONS — STAGE 3

### 6.1 INTRODUCTION

In the third stage of the application process, the Agency completes and confirms its underwriting of those applications which passed beyond Stage 2, the initial application stage, and completes its environmental review. During this stage, applicants must submit additional information about the proposed project, project construction or improvements, other financing, and the proposed entity and procedures for managing the project. Agency staff use this information to make a final determination about the feasibility of the project, establish that the applicant has adequate systems to successfully develop and operate the project under the program, and set the terms of Agency financing. The applicants also sign the loan agreement or resolution, as applicable, which becomes their legal obligation to comply with all Agency program requirements.

### 6.2 OVERVIEW OF STAGE 3, FINAL APPLICATIONS

In the final application stage, or “Stage 3” of the loan origination process, the Loan Originator requests final applications from those loan applicants who have met the tests of eligibility and feasibility and passed the underwriting analysis conducted in the initial application stage. The environmental review is completed and the Loan Originator generally meets with the loan applicant again to discuss any outstanding issues and how to assemble the loan docket. As soon as the final application is requested, the Loan Originator will once again contact any other states in which the applicant has loans to confirm that the applicant is in compliance with those loans.

Once the final applications are submitted, the Loan Originator conducts a final analysis of the loan applications to confirm project eligibility and feasibility and to ensure that compliance with environmental requirements is accomplished. The Loan Originator then makes a recommendation to the State Director as to whether or not to fund the loan. The State Director, or the State Director’s designee, will make the final decision on the loan.

#### Key Origination Activities in Stage 3

- ◆ Request final application
- ◆ Confirm for parallel structure with other states that applicant is in compliance
- ◆ Meet with loan applicant
- ◆ Perform final analysis to confirm eligibility and feasibility
- ◆ Run SAUCE program
- ◆ Work with loan review committee as appropriate
- Make recommendation for loan approval or rejection to State Director
- Obligate funds

## **SECTION 1: REQUESTING FINAL APPLICATIONS AND MEETING WITH THE APPLICANT**

### **6.3 REQUESTING FINAL APPLICATIONS**

#### **A. Invitation to Submit Final Application**

The Loan Originator must send a formal letter to all loan applicants who are to proceed to the final application stage of the loan origination process, reminding them of the information and forms that they are required to submit as a final application, and telling them they have 30 days from the date of the notification letter to do so. These letters must be sent immediately following the 30-day review period of the information submitted in Stage 2. The letter should also include an invitation to the loan applicant to attend another meeting with the Loan Originator to discuss final application requirements and to establish the loan docket.

The cover letter to the invitation to submit a final application must include the following statement, which was also included in the cover letter inviting the initial application:

“The action taken herein is based upon representation made in your loan request. Any changes therein, including but not limited to changes in complex cost, size, or scope of complex, rental rates, or subsidy costs to the Agency, scope of services, sources of funds, etc., may adversely affect this decision and must be reported to and approved by the Agency in writing. Any changes not approved by the Agency will be cause for the Agency to discontinue processing your request. All applicants requesting changes will be required to give full justification for each change and, if Agency approval is not given, written reasons will be given with a 30-day negotiation period to resolve the difference.”

#### **B. Content of final application**

The final application from a loan applicant consists of additional information about a proposed project that confirms and documents a project’s eligibility and feasibility. The initial application package sent to the applicant by the Agency included the required forms and listed the information which would be due at Stage 3. As a result, some applicants may have already submitted some of the information which is now requested from them. Regardless of whether or not this is the case, the Loan Originator must send the loan applicant another letter that includes the forms and lists the information that is due within 30 days; Exhibit 6-1 lists the forms and information which must be sent to the applicant and Exhibit 6-2 lists the information that the Agency must identify to the applicant as required at Stage 3.

**Exhibit 6-1****Contents of Final Application Package Sent to  
Loan Applicant Forms To be Returned by Applicant at Final Application**

1. *Form RD 1944-30, Identity of Interest Disclosure Certification*
  2. *Form RD 1944-31, Identity of Interest Qualification*
  3. *RD Instruction 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts*
  4. *Management Certification Form*
  5. *Management Profile Form*
  6. *Form HUD 935.2, Affirmative Fair Housing Marketing Plan*
  7. *Form RD 1924-13, Estimate and Certificate of Actual Costs*
  8. *Form RD 400-1, Equal Opportunity Agreement*
  9. *Form RD 400-4, Assurance Agreement*
  10. *AD 1047, Certificate Regarding Debarment*
- Other Materials Provided to the Loan Applicant**
11. *Guide I of RD Instruction 1924-A, Planning and Performing Construction and Other Development*
  12. *Exhibit C of RD Instruction 1924-A, Planning and Performing Construction and Other Development*
  13. *Loan Agreement or Resolution, as applicable*
  14. *Multiple Family Housing Deed of Trust (state specific)*

**Exhibit 6-2****Information Required at Final Application**

1. Final cost estimates (on *Form RD 1924-13, Estimate and Certificate of Actual Cost*)
2. Final plans/construction documents as listed in Guide 1 of RD Instruction 1924-A, Planning and Performing Construction and Other Development
3. Environmental review
4. Agreements/Documents: Architectural/Engineering, Legal
5. State or local approvals (zoning, utilities)
6. Preliminary title report
7. Confirmation of SHPO evaluation and comments
8. Schedule of charges for nonshelter services (congregate)
9. Services Agreement (congregate)
10. Executed copy of a limited equity agreement (**Attachment 12-E**, cooperative housing)
11. Completed subscription agreement (**Attachment 12-I**, cooperative housing)
12. Disclosure of any change in financing
13. Management plan with attachments
14. Relocation plan, if relevant
15. Detailed operating budget showing typical year's operation (as shown on *Form RD 1930-7, Multi-Family Housing Project Budget*), the first year's budget (also on *Form RD 1930-7*) and use of two percent initial operating capital
16. Interim lender's commitment letter with evidence of license to do business in state (if interim financing is being used)
17. Land survey
18. Final organizational documents or Certificate of Good Standing, if existing organization
19. Attorney's opinion letter that entity is in conformance with program requirements.

**C. Construction Contract Documents**

The invitation to submit the final application should also include the following information to assist the loan applicants with their development plans and construction documents:

- Guide 1 to RD Instruction 1924-A, Planning and Performing Construction and Other Development. This guide specifies the required Agency documents and modifications thereto. All of the contract documents may not be available by the specified final application deadline, as they may be dependent upon loan approval. If

all of the documents are not available, any missing documents must be identified as due before loan closing in the letter of conditions sent at loan approval.

- Exhibit C of RD Instruction 1924-A, Planning and Performing Construction and Other Development, “Guide for Drawings and Specifications.”

#### **6.4 MEETING WITH THE APPLICANT AND PREPARING THE LOAN DOCKET**

The Loan Originator should meet with all loan applicants in individual and separate meetings within a week after the letter inviting final application has been mailed. It is recommended that this meeting be held in person, even if the applicant has experience with prior RHS multi-family loans, but the meeting may be conducted by phone in the case of such experienced loan applicants.

At this meeting, the Loan Originator will:

- Discuss any outstanding issues with the loan applicant, including the status of the environmental review;
- Provide loan applicants with copies of appropriate exhibits and forms, including *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*;
- Furnish guidance necessary for orderly application processing;
- Initiate a processing checklist for use in establishing a schedule for completion of docket items (this item is to be provided to the loan applicant); and
- Provide any other guidance to the applicants upon request and answer any of their questions.

The Loan Originator must explain to the loan applicants that they are responsible for providing the necessary information to develop the docket and that all items must be submitted by the final application deadline. Extensions of the deadline may be granted on a case-by-case basis. **Attachment 6-A** provides a list of Agency required docket items and their positions in the docket.

The Loan Originator must confirm decisions made at this meeting in a follow-up letter to the loan applicant. The original processing checklist and a copy of the letter to the loan applicant must be retained in the servicing office and a copy of each must be sent to the State Office.

It is important that the Loan Originator remember that if a face to face meeting is not held with an experienced loan applicant, then the docket, processing checklist, deadlines, and all forms mentioned above must be mailed to the applicant. The cover memo sent with these items will serve as confirmation that the Agency has provided the applicant with the necessary information required to continue processing the application.

## **6.5 APPLICANT'S COMPLIANCE WITH OTHER AGENCY DEBT**

At this time, the Loan Originator must contact any other states in which the loan applicant has existing loans to verify that the loan applicant is either in compliance with those loans, or has been in compliance with a workout agreement for six months as of the date the initial application was due. If the applicant was not in compliance as of that date, the Loan Originator must contact the applicants immediately to reject their applications and give them appeal rights in accordance with 7 CFR part 11. The Loan Originator must also immediately notify the National Office so funds can be redistributed.

## SECTION 2: REVIEWING THE FINAL APPLICATION

### 6.6 OVERVIEW OF REVIEWING THE FINAL APPLICATION

The Loan Originator reviews all final loan applications submitted for completeness and adequacy. Final applications that are not submitted on time or are not complete are rejected and returned to the applicant, unless the Loan Originator grants an extension for unforeseen circumstances.

The analysis conducted at this stage is one which:

- verifies and documents feasibility and eligibility;
- confirms the project still complies with the basis upon which it was originally scored and ranked; and
- verifies environmental compliance.

Any changes to the loan application in terms of financing, applicant entity, or project design must be reviewed carefully to ensure that the project continues to be eligible and feasible and the original basis upon which the project was scored and ranked is not changed. To establish continued eligibility and feasibility, it may be necessary for the Loan Originator to repeat some of the underwriting tests conducted in stage 2 of the origination process.

### 6.7 APPLICANT ELIGIBILITY

The Loan Originator reviews the following documents submitted by the applicant and confirms that they establish that the applicant meets the eligibility criteria of 7 CFR 3560.55.

#### A. Acceptable Borrower Entity

The Loan Originator ascertains whether the loan applicant is an acceptable borrower entity by taking the following actions when reviewing the final application documents.

##### 1. *Organizational Documents*

The Loan Originator reviews the final organizational documents or Certificate of Good Standing if the applicant is an existing organization, to confirm that all the documents have been properly signed, that they include the correct citation for the organization, that the state documentation and all necessary recording information is included. If the applicant is a nonprofit organization, the Loan Originator confirms that their purpose includes the provision of affordable housing. Once the Loan Originator has established that the organizational documents meet these criteria, they are sent to OGC for its review.

## **2. Attorney Opinion Letter**

The Loan Originator sends the applicant's attorney's opinion letter that states that the entity is in conformance with the program requirements to OGC for its review.

## **3. Certification Regarding Debarment**

The Loan Originator confirms the signed submission of *AD 1047, Certificate Regarding Debarment*, which is the applicant's certification that there are no debarment issues with their loan application. The Loan Originator will have already checked the list of debarred individuals when the project proposal was first submitted and contacted other states in which the applicant has projects, so receipt of this form will further document that the applicant is a borrower in good standing with the government.

## **B. Identity of Interest Disclosure**

The Loan Originator reviews the identity of interest disclosures to determine existing identity of interest relationships involving the applicant entity. *Form RD 1944-30, Identity of Interest Disclosure Certification*, and *Form RD 1944-31, Identity of Interest Qualification*, must be cross checked. *Form RD 1944-30* must disclose all identity of interest companies and the Loan Originator must verify that each such disclosed company has completed a *Form RD 1944-31, Identity of Interest Qualification*.

## **C. Applicant Certification Regarding Debt Collection**

The applicant must sign *Form RD 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts* to certify to their understanding of the collection policies that will be taken by the Agency to recover delinquent or defaulted debts. The Loan Originator makes sure that the signed form is included in the final application.

# **6.8 FINAL PROJECT ELIGIBILITY**

During the final project eligibility review stage, the Loan Originator must establish that the project continues to meet all program requirements.

## **A. Property Requirements**

In reviewing the final application, the Loan Originator must determine that:

- Any concerns about environmental, site, or design issues identified in the initial application stage have been resolved;
- The appropriate level of environmental review has been completed in full (to include applicable public notices and their review periods) and the applicant has agreed to any mitigation measures contained in the environmental review; and



- No other changes in project site or design have occurred since the last review. If so, these changes need to be evaluated to make sure the project still meets program requirements.

The final plans/construction documents must be provided to the State Architect who will review them to see that any required changes have been made and that program design requirements have been met.

## **B. Acceptable Agreements and Contracts**

The Loan Originator or appropriate Agency staff must review all architectural, engineering, environmental, and legal documents to determine that they are acceptable.

## **C. Concurrence with Construction Contracts**

All construction contracts between the loan applicants and contractors for development of a project must contain a provision that the contract is not in full force and effect until the State Director concurs in writing with the form, content, and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Directors or their delegates must concur with the contract form, content, and execution by including the following paragraph at the end of the contract:

“The Agency, as a potential lender or insurer of funds to defray the cost of this contract, and without liability for any payment thereunder, hereby concurs with the form, content, and execution of this contract.”

Date \_\_\_\_\_

Rural Housing Service:

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **D. Clear Title and Necessary Local Approval**

### ***1. Clear Title***

The preliminary title report is a part of the final application. The Loan Originator must make sure that it does not show any unacceptable exceptions. Examples of unacceptable exceptions include outstanding liens, unresolved estates, easements, restrictions on minority individuals living on the land, and outstanding mining rights.

### ***2. State and Local Approvals***

The Loan Originator must ensure that the final application shows that all the necessary state or local approvals have been obtained for site development and construction. These would include proper zoning and necessary utility rights, and building permits.

## **E. Prohibited Conditions**

The Loan Originator must make a final confirmation that no conditions that would prohibit the further processing of the loan have come up for the area in which the project is being located. Paragraph 5.14 explains these conditions and the procedures for making sure that such conditions do not exist.

## **6.9 FINAL PROJECT FEASIBILITY ANALYSIS**

The Loan Originator reviews the applicable documents in the final application to verify that project costs are indeed going to be as proposed and that there are no impediments to finalizing the project. A final subsidy layering review is also conducted to confirm that the Agency is not providing any more assistance than is necessary to make the project feasible. Section 3 of this chapter provides further details on this review.

### **A. Are Final Costs Acceptable?**

As the final analysis of project costs, the Loan Originator must establish that:

- Any concerns about project costs identified in the initial application stage have been resolved; and
- No other changes in project costs have occurred since the last review. If so, these changes need to be evaluated to make sure the project still meets program requirements.

The Loan Originator reviews the final cost estimates shown on *Form RD 1924-13, Estimate and Certificate of Actual Cost* to answer the above questions.

### **B. Matching Income Stream with Projected Costs**

The Sources and Uses Comprehensive Evaluation (SAUCE) program will show whether the projected income stream will match projected costs. This program should be rerun as a final feasibility analysis. If the projected income and costs do not match, the project costs and rent structure must be reassessed for changes that can be made to either the costs or the rents to bring the two in line with each other.

### **C. Failure to Obtain Leveraging**

If the applicants have not been able to confirm the leveraging they anticipated in the initial application by this time, they will be given 10 days in which to find alternative leveraging. If none is available, the application must be rejected and the National Office informed immediately of the availability of unallocated funds.

### **D. Adequacy of the Initial Operating Capital**

All borrowers except nonprofit borrowers must contribute from their own resources two percent of the total development cost as initial operating capital. If *Form RD 1930-7*,

*Multi-Family Housing Project Budget*, shows that more than two percent is needed, the loan applicants are required to fund this additional amount from their own resources as well.

Loan applicants must provide with their final application a list of materials and equipment that need to be funded by the two percent initial operating capital. These items may include, but are not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishing, advertising expenses, management fees, etc.

In order for the Loan Originator to approve the list, the Loan Originator must conclude that:

- The items shown are necessary for the project; and
- The costs identified are comparable to other comparable projects in the area.

## **E. Management Systems**

The Loan Originator must evaluate whether the applicant has proposed adequate systems to manage the property successfully in accordance with Agency requirements.

### ***1. Acceptable Project Management***

In order for a final application to be approved, loan applicants must show that they will provide professional management to ensure the successful operation of the project. The Loan Originator will evaluate the acceptability of the three management documents provided by the loan applicant at this stage:

- The management profile, which describes the management company that will manage the project.
- The management certification form which describes the relationship between the management agent, the loan applicant, and the Agency, and which certifies that the management agent will comply with Agency requirements and contract obligations.
- The management plan that provides the details of how the management agent intends to operate the project. The Loan Originator must review all the attachments to the management plan, including proposed leases, waiting lists, etc. to make sure that everything is in compliance with program rules.

Chapter 3, Project Management, of the Asset Management Handbook provides details on how to evaluate these management documents.

## 2. *Affirmative Fair Housing Marketing Plans (AFHMP)*

As part of the final application, loan applicants must submit *Form HUD 935.2, Affirmative Fair Housing Marketing Plan* to describe their marketing plan for the project. The intent of this plan is to ensure that all eligible tenants are made aware of the multi-family housing project.

The Loan Originator or designated Agency staff must approve and sign this form. It is therefore the Agency's responsibility to ask the loan applicant to make revisions to the plan if the Agency review shows such revisions to be necessary.

### **Required AFHMP Attachments**

- Copies of the specific page(s) from the census report on which the plan was based
- Photograph or drawing of the project sign
- Copies of the newspaper advertisement or sample of proposed advertisement
- Sample community contact letters
- Brochures, leaflets, or handouts used
- Written instructions provided to staff concerning Federal, State, and local fair housing laws and regulations as well as concerning the AFHMP

The Loan Originator can use Exhibit 6-3 when reviewing Affirmative Fair Housing Marketing Plans. This exhibit describes each part of the plan and provides guidance on what to look for in each part.

**Exhibit 6-3****Contents of the Affirmative Fair Housing Marketing Plan**

- A. Part 1 of the plan provides general information about the loan applicant and the project's location.
  - 1. Make sure the blank for the Census Tract is completed. Copies of the specific page(s) from the census report on which the plan was based must be attached and the areas considered to be the market area should be identified (highlighted) by the loan applicant. By doing so, both the market and the source of the market data will be identified.
  - 2. The blanks for the rental rates should indicate the lowest to the highest rents. If there is rental assistance, the lowest rent should be shown as zero.
- B. Part 2 of the plan indicates whether the market area is a minority, nonminority, or mixed area. Verify that what is checked in this part corresponds directly to the census data.
- C. Part 3 of the plan indicates the groups toward which the marketing efforts are going to be directed. It should also correspond directly with the census data and the community contacts that are identified.
- D. Part 4 describes the marketing program.
  - 1. Ensure that the loan applicant has indicated they will advertise on an annual basis.
  - 2. Check to see if minority newspapers have been considered as part of the advertising plan.
  - 3. Make sure the loan applicant has attached a sample of the proposed advertisement.
  - 4. Review any copies of brochures, leaflets, or handouts the loan applicant intends to use. Review them to ensure the equal housing opportunity statement, logo, or slogan is used.
  - 5. A photo or rendering of the project sign must be provided. The dimensions of the project sign must be indicated and described in terms of feet and/or inches. The logo and the words "Equal Housing Opportunity" must be distinguishable in the photo or rendering. The accessibility logo and a TDD number must also appear.
  - 6. The proposed community contacts must reflect efforts directed toward groups identified in block 3. Ensure each blank in this section is completed (address, phone numbers, etc.). The frequency of contacts must be stated, at a minimum, as "at least once annually" or "(date) and annually thereafter." Sample community contact letters must be attached.
- E. Part 5 describes future marketing activities. Make sure the loan applicant has indicated future marketing activities that include, as a minimum, "Newspapers, site sign, and community contacts."
- F. Part 6 describes the loan applicant's experience and the instructions given to staff regarding fair housing marketing. Make sure that the loan applicant has attached the instructions given to staff concerning federal, State, and local fair housing laws and regulations, as well as instructions concerning the Affirmative Fair Housing Marketing Plan.
- G. Part 7 describes additional considerations that are planned to outreach to groups not previously mentioned in the plan or to groups identified as least likely to apply for the housing. If this plan is for an elderly project, the loan applicant must have included community contacts for the handicap/disabled, who are also eligible to reside at the project. If the plan is for a family project, make sure the loan applicants have included efforts to make the units with special design features known to provide mobility to impaired persons.
- H. Part 8 is the signature block. It must be signed by the legal loan applicant or by the loan applicant's agent.

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## SECTION 3: DETERMINING LOAN LIMITS, RATES, AND TERMS

### 6.10 DETERMINING LOAN LIMITS [7 CFR 3560.62]

The Agency applies a maximum debt limit to every project that is based on the value of the project and the type of applicant entity. **Attachment 6-B** provides several loan calculation worksheets and examples of different types of loans.

#### A. Determining Maximum Debt Limit and Equity Contribution

The maximum amount the Agency will lend for a project is based on the lesser of a project's total development cost or appraised value minus any other loans on the project. This is referred to as the loan basis.

| Example   |   |
|---|---|
| \$1,000,000   | TDC   |
| 950,000   | Appraised Value                             |
| 200,000   | Other Loan                                  |
| 750,000   | Agency's loan basis (\$950,000 - \$200,000) |
| The Agency will use \$750,000 as the loan basis on which it will determine its loan amount. |   |

The loan basis is then multiplied by 95 percent, 97 percent, or 102 percent, depending upon the applicant entity. The applicants must make up any difference as the equity requirement from their own resources. Exhibit 6-4 shows the Agency loan limits and applicant contribution requirements.

**Exhibit 6-4**

**Agency Loan Limits and Applicant Contribution Requirements**

| Agency Loan Limit      | Applicant Contribution    | Operating Capital  | Qualifications  |
|------------------------|---------------------------|--|---|
| 97% loan               | 3% applicant contribution | 2% initial operating capital provided by the applicant                         | Individuals, corporations, or partnerships that do NOT receive low-income housing tax credits |
| 95% loan               | 5% applicant contribution | 2% initial operating capital provided by the applicant                         | Individuals, corporations, or partnerships that DO receive low-income housing tax credits     |
| 100% loan<br>102% loan | contribution not required | 2% initial operating capital provided by the applicant or included in the loan | Nonprofit organizations or public bodies  |

For all applicants, the amount of loan after capitalized construction interest is considered will not exceed the loan limits as set forth in Exhibit 6-4. However, PASS loans closed with multiple advances may exceed that amount when the loan is closed other than on the first of the month. In this case, the interest is capitalized to the first of the following month and is added to the loan amount.

## **B. Land or Cash Equity Contribution**

Loan applicants may make their equity contribution only in the form of land or cash.

If a borrower uses owned land as equity contribution and the land value is more than the equity requirement, the additional value of the land will not be covered by loan funds. However, the borrower may receive a return to owner on the additional value of the land up to the value of the land provided that:

- The value of the land on which the return is paid, when added to the loan and grant amounts from all sources, does not exceed the security value of the housing project; and
- Payment of the additional return does not cause rents to exceed conventional rents for comparable units.

Land that has been donated and received points in the scoring process as donated land may not be considered equity contribution nor may a return on the value of the land be allowed.

Any borrower contribution that is cash will be used first as project development commences; then the rest of any leveraged funds will be used in lien priority. In most cases, the interim lender will collect all funds and distribute them, but the Agency must nevertheless track these disbursements and their sources as they occur.

## **C. Subsidy Review**

The loan applicant must identify any changes in sources and uses. If there are any, the Loan Originator must make sure that they still meet the program requirements by rerunning the SAUCE program to confirm that the amount of government assistance is no more than necessary to make the project feasible.

If sources of financing exceed proposed uses by more than \$25,000, then the government assistance to the project must be reduced. When the Loan Originator must reduce the loan amount, the Loan Originator will provide the loan applicant with formal notification and inform the state agency (if there are low-income housing tax credits being applied to the project), any other financing source, and the National Office.

The Loan Originator will consult with the applicant as well as with the State Agency or any other financing sources to reach an agreement on reducing the excess assistance by taking one of the following steps:

- Reducing the number of tax credit units requested;



- Reducing the level of assistance provided by one or more of the other sources of funds (if applicable);
- Revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the multi-family housing program and will assist the resident population being served by the housing; or
- As a last resort, reducing the amount of equity contribution through the reduction of the loan amount.

## **6.11 SETTING LOAN RATES AND TERMS [7 CFR 3560.65]**

### **A. Interest**

Loans are closed at the lower of the interest rate in effect at the time of loan approval or that in effect at the time of loan closing. The Agency specifies interest rates periodically in RD Instruction 440.1, Interest Rates, Amortization, Guarantee Fee, Annual Charge, and Fixed Period. The Loan Originator refers to this Instruction to make a note of the interest rate at the time a loan is approved, compares this rate with the interest rate in effect at loan closing, and inserts whichever rate is lower into *Form RD 1944-52, Multi-Family Housing Promissory Note*.

### **B. Interest Credit**

The Agency provides interest credit to subsidize the interest rate shown in the Promissory Note to a payment rate of one percent for all loans. *Form RD 1944-7, Multi-Family Housing Interest Credit and Rental Assistance Agreement* is used to establish the credit at loan closing. This form amends the Promissory Note.

### **C. Loan Term and Amortization Period**

Initial loans are amortized over 50 years and paid over a period not to exceed 30 years, except for manufactured housing which is amortized and paid for over a period of 30 years. The amortization period is shown in the Promissory Note.

Subsequent loans for repair and rehabilitation are amortized over 50 years or the remaining economic life of the project, whichever is less. The loan term is 30 years or the economic life of the project, whichever is less.

## **6.12 ESTABLISHING PROFIT BASE AND RETURN ON INITIAL INVESTMENT [7 CFR 3560.66]**

### **A. Return on Required Investment**

Limited profit applicants are permitted a return not to exceed 8 percent on their initial required investment (the equity contribution of three percent or five percent of the RHS loan amount; see paragraph 6.11 for details).

The return to owner is shown as an operational cash use on budget *Form RD 1930-7, Multi-Family Housing Project Budget* and approved by the Loan Originator as part of the budget approval process.

## **B. Return on Additional Investment**

A return will be allowed on additional contributions of the loan applicant's own resources, provided and to the extent that:

- The additional contribution, when added to the Agency loan amount and all sources of project funding or financing, does not exceed the security value of the project; and
- The additional return does not result in an increase in rents beyond the conventional rents for comparable units (CRCU). The return on the additional investment may be less than 8 percent if necessary to keep rents below CRCU.

Thus, for example, a return will not be allowed on any proceeds contributed by the applicant to cover total development costs that exceed appraised value.

## **C. Tax Credit Proceeds**

Proceeds received by the loan applicant from the syndication of low-income housing tax credit and contributed to the project may be considered funds from the loan applicant's own resources for the portion of the proceeds that exceeds:

- The allowable developer's fee determined by the State agency administering the low-income housing tax credits; and
- The amounts expected to be contributed to the transaction, as determined by the State agency administering the low-income housing tax credit.

## **D. Building Sites**

A building site contributed to meet the equity requirement by the loan applicant will be appraised by the Agency to determine its value. A return may be allowed on the amount above the required equity contribution up to the value of the land that is needed for the project and so long as project rents do not exceed CRCU when the return is allowed.

If the appraisal shows a lower value than originally estimated and is less than the required contribution, the applicants will have to contribute additional funds from their own resources to make up the difference. If points were given for the value which was not realized, the National Office must be contacted for guidance.

## **SECTION 4: REJECTING AND APPROVING FINAL APPLICATIONS**

### **6.13 REJECTING FINAL APPLICATIONS**

If a loan is disapproved after the docket has been developed, the Loan Originator will take the following steps:

- Change the current stage code in AMAS to reflect rejected or withdrawn applicant.
- Handle the disapproved docket in accordance with RD Instruction 2033-A, Records Management in Rural Development Field Offices.
- Notify the applicant of the reason(s) for disapproval. If disapproval is not at the applicant's request or mutual agreement, the applicant will be notified of the right to request a further review of the decision in accordance with 7 CFR part 11. Any notice of rejection or adverse action must include the following paragraph:

“The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income is derived from any public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission. If any person believes they were denied assistance, in violation of this law, they should contact the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.”

### **6.14 RECOMMENDING PROJECTS FOR FINAL APPROVAL**

#### **A. Preparing the Recommendation for Approval**

In preparing the recommendation for approval, the Loan Originator will:

- Ensure that the appropriate level of environmental review has been completed in full, including the review and concurrence of the State Environmental Coordinator and all applicable public notices and associated review periods;
- Obtain the analysis and recommendations of the loan review committee, if appropriate; and
- Conduct a complete review of the proposed management and occupancy procedures to ensure compliance with Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The Office of Civil Rights can assist the Loan Originator in conducting this review.

#### **B. Submitting the Completed Docket**

The Loan Originator will submit the completed docket with a cover memo recommending approval to the loan approval official. The cover memo will detail the

proposed conditions of loan approval and indicate if construction will be financed by interim financing or multiple advances.

## **6.15 ACTION BY THE LOAN APPROVING OFFICIAL**

### **A. Review of Docket by Loan Approving Official**

The State Director may redelegate loan approval authority in writing to State Office employees.

The loan approving official must review the docket to confirm that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approving official will verify that:

- The applicant is eligible and has legal authority to contract for a loan and enter into the required agreements;
- The location of the housing meets program requirements;
- The funds are requested for an authorized purpose;
- The proposed loan is sound;
- The commitment of leveraged funds has been obtained;
- The security is adequate (See Chapter 8, Security Requirements);
- All preapproval documents required for a complete loan application have been executed;
- The proposal is in compliance with all environmental requirements and,
- If applicable, flood insurance requirements have been met and *Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance*, has been executed by the client.

### **B. Approving Loans**

When the final analysis is complete and the Agency is ready to approve the loan, the Agency must first obtain two documents from the applicant:

- The Agency must complete and deliver to the applicant for signature and date *Form RD 1944-51, Multiple Family Housing Obligation Fund Analysis*. Once this form has been returned, the Agency will execute the form and send a copy of it to the applicant.
- The applicant must provide the Agency with a signed copy of the Loan Agreement or Resolution, as appropriate.

Loans will be approved in accordance with 7 CFR 3560, subpart B and RD Instruction 1901-A, Program-Related Instructions.

## 6.16 LETTER TO INTERIM LENDER

When the loan has been approved, the Loan Originator will send a letter to the interim lender, informing them of the amount and terms of the loan that RHS is preparing to close for the loan applicant. **Attachment 6-C** is an example of such a letter.

## 6.17 OBLIGATING FUNDS

Once the Agency approves a loan, the loan funds must be obligated.

### A. Initial Obligation

When the loan has been approved, the Loan Originator must take the following steps to obligate the funds.

- Complete Form RD 1944-51, Multi-Family Housing Obligation — Fund Analysis; and
- In AMAS, complete the screen Obligate Loan/Grant Funds **[M1A]**. The number of months entered in the M1A should be the number of months for loan amortization (i.e., 600), not loan term.

### B. Changing the Loan Amount

#### 1. *Decreasing the Loan Amount*

It may at times be necessary to decrease the amount of a loan obligation prior to loan closing. For example, if the loan applicant changes from interim financing to multiple advances, the interest costs designated for the interim lender must be subtracted from the loan amount.

In these cases, the extra loan funds must be deobligated and all paperwork and AMAS records corrected. The Loan Originator must notify the National Office so that funds may be redistributed when possible.

- To change the loan amount in the application record, use screen M1AA.
- To change the obligation amount, deobligate the excess funds in AMAS, using the screen *Cancel Loan/Grant Obligation* **[M1D]**.
- Forms to be updated when funds are deobligated include:
  - ◇ *Form RD 1944-51, Multiple Family Housing Obligation — Fund Analysis*, and
  - ◇ *Form RD 1944-33, 34, or 35, Loan Agreement/Resolution*.

## 2. *Increasing the Loan Amount*

The Agency rarely allows the amount of the loan to be increased. In cases in which the borrower can justify the need for extra funds (e.g., for circumstances beyond the borrower's control), and it is in the same fiscal year in which the loan was obligated, the Agency may deobligate the loan and obligate a larger loan if approved by the National Office. If the funds are required in a fiscal year following that in which the loan was originally obligated, the Agency may approve a subsequent loan. See Chapter 11, Subsequent Loans and Loans for Final Payments, for details on subsequent loans.

## 3. *Ordering Checks*

The Loan Originator must take into account that it will take approximately five days to receive the check after ordering it.

### Multiple Advances

AMAS is used to order, disburse, and track multiple advances. Monitoring multiple advances is especially important to ensure that

- accrued interest does not cause the maximum debt limit to be exceeded; and
- any funds not needed for the final draw are deobligated before the final check is drawn, otherwise the AED will not be established.

The following screens are used to process multiple advances:

- To order checks for multiple advances, complete the screen **[M1C]**, *Issue Loan/Grant Check*.
- To see all disbursed checks, use screen **[M8CI]**, *Loan/Grant/Cost Checks*.
- Use screen **[M1AI]**, *Obligation Inquiry*, for maximum debt limit.
- Use screen **[M1XI]**, *Accrual Calculation Request*, for disbursed amount and accrued interest to ensure that the maximum debt limit is not exceeded.

### Interim Financing

If interim financing is used, a single check must be ordered to pay off the interim financier. Use the **[M1C]** screen, *Issue Loan/Grant Check*.

## 6.18 FOLLOW-UP TO OBLIGATIONS

To ensure that obligated funds are used promptly, the Loan Originator should make periodic checks to verify that project construction is progressing. If after 12 months, construction on an approved project has not begun or is significantly behind schedule, the Loan Originator must document in the case file that the project has been reviewed and that a decision has been made regarding the continued obligation of funds.

- The Loan Originator may choose to cancel the loan and deobligate the funds. If the deobligation occurs during the same fiscal year in which the obligation was initiated, the funds are returned to the National Office. If the obligation was made in a prior fiscal year, the deobligated funds revert to the Treasury.
- The Loan Originator may choose to allow the borrower another 12 months to make progress on the construction.

## 6.19 CANCELING AN OBLIGATION

In some cases, it may be necessary to cancel an obligation prior to closing either because the borrower withdraws from the process or the Agency receives new information that disqualifies the borrower. In these cases, the Loan Originator must:

- Notify the applicant and closing agent of the cancellation. In situations where the cancellation is not the applicant's choice, the Loan Originator must inform the borrower of any action that can be taken to correct or appeal the decision. (It is the applicant's responsibility to notify other interested parties, such as any contractors, of the cancellation.)
- Notify the National Office so that funds may be redistributed when possible.
- Deobligate the loan. This involves the following steps.
  - ◊ In AMAS, cancel the obligation using screen Cancel Loan/Grant Obligation [MID].
  - ◊ Complete *Form RD 1944-53, Multi-Family Housing Cancellation of U.S. Treasury Check and/or Obligation*.
- Void the check, if necessary. If the check has already been ordered and received by the Field Office, it must be voided and returned to the Finance Office.

The Loan Originator must document the Agency's or applicant's decision to cancel the obligation in the running record or project case file.

## 6.20 LETTER OF CONDITIONS

When a loan is approved, the loan approval official must send the applicant a letter of conditions which must be met in order for loan closing to occur. This letter describes the rates and terms at which the loan has been approved, restates program requirements to which the applicant must adhere, specifies the construction requirements, and lists any conditions which the applicant must meet prior to loan closing. The loan applicant must sign and return this letter to the Agency within five days. The loan approval official must send a copy of this letter to the Loan Originator since it provides all the details of the approved loan and the construction requirements. The information to be included in the letter is listed in Exhibit 6-5.

**Exhibit 6-5****Information to be Included in the Letter of Conditions**

The following information should be included in the letter of conditions:

**To describe loan rates and terms:**

- The debt limit approved, the applicable interest rate, the loan term, and the amortization term;
- Equity contribution requirements;
- Initial two percent requirement;
- A request for confirmation that the borrower will pay cost overruns;
- Security requirements;
- Any changes required to the management profile, certification, or plan;
- All mitigation measures required by the environmental review;
- Allowed rents; and
- Rental assistance, if any, and associated requirements.

**To summarize program requirements:**

The letter of conditions should include a brief summary of each of the following requirements:

- Tenant eligibility requirements (see 7 CFR 3560.152);
- Accounting requirements (see 7 CFR 3560.302);
- Annual financial examination requirements (see 7 CFR 3560.307);
- Annual budgets and other reporting requirements (see 7 CFR 3560.303);
- Compliance with applicable civil rights laws, regulations, and Agency policies (see 7 CFR 3560.104);
- Insurance requirements (see 7 CFR 3560.105 and paragraph 6.22);
- Other conditions (agreement to allow Agency access, agreement to keep records, identity of person keeping records and accounts); and
- Required covenant in instrument of conveyance or deed of trust concerning civil rights as follows:

“The property described herein was obtained or improved with federal financial assistance and is subject to the provisions of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and the regulations issues thereto. This covenant is in effect for as long as the property continues to be used for the same or similar purpose for which the financial assistance was extended, or for as long as the above recipient owns it, whichever is longer.”

**To describe construction and development requirements:**

- Public bid requirements;
- Construction accounting requirements;
- Cost certification requirements; and
- Additional cost certification requirements for IOI projects.

**To accept letter of conditions:**

- Space for applicant’s signature of agreement
- Return address



## 6.21 INSURANCE REQUIREMENTS

The loan applicant must have certain insurance in place at loan closing. The loan applicant is notified of these requirements at loan approval in the letter of conditions. At a minimum, the following types of insurance must be carried:

- Fire and extended coverage on all buildings included in the security for the loan;
- Suitable worker's compensation insurance will be carried by the applicant for all its employees;
- Flood insurance on all buildings located in or to be located in special flood or mudslide prone areas; and
- Liability insurance.

Chapter 3, Property Management, of the Asset Management Handbook covers these requirements in greater detail.

## 6.22 ASSIGNING CASE NUMBERS, PROJECT NUMBERS, AND LOAN CODES

The loan approval official assigns the borrower's case number using the State and county codes where the project will be located and the borrower's tax identification number. If the borrower does not have a tax identification number, the state assigns a temporary number from the block of numbers assigned to the state. When the borrower receives a tax identification number, the state must replace the temporary number. *Form 1944-51, Multi-Family Housing Obligation — Fund Analysis*, provides the details on how these numbers are assigned.

Each project will be assigned a project number by AMAS. When the tax identification number is identified in a future case number anywhere in the nation, AMAS will assign project numbers sequentially.

When the total number of units financed are built or purchased at one place at one time, the loan will be coded as the initial loan on the project.

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## ATTACHMENT 6-A

### AGENCY DOCKET CHECKLIST

| ITEM   | Agency | Applicant | Docket Position | Date Due | Date Received |
|--|--------|-----------|-----------------|----------|---------------|
| 1. <i>Form RD 1944-50, Multi-Family Housing Borrower/Project Characteristics</i>                                   | X      |           | 2               |          |               |
| 2. <i>Form RD 1944-51, Multi-Family Housing Obligation — Fund Analysis</i>   | X      |           | 2               |          |               |
| 3. <i>SF 424.2, Application for Federal Assistance (For Construction)</i>  |        | X         | 3               |          |               |
| 4. <i>Form HUD 2530/RD 1944-37, Previous Participation Certification</i>   |        | X         | 3               |          |               |
| 5. <i>Form RD 1944-30, Identity of Interest (IOI) Disclosure Certification</i>                                     |        | X         | 3               |          |               |
| 6. <i>Form RD 1944-31, Identity of Interest (IOI) Qualification</i>  |        | X         | 3               |          |               |
| 7. <i>Form RD 1910-11, Application Certification, Federal Collection Policies for Consumer or Commercial Debts</i> |        | X         | 3               |          |               |
| 8. <i>Form RD 400-4, Assurance Agreement</i>   |        | X         | 3               |          |               |
| 9. <i>Form RD 440-25, Financing Statement</i>  |        | X         | 1               |          |               |
| 10. <i>Form RD 400-1, Equal Opportunity Agreement</i>  |        | X         | 6               |          |               |
| 11. <i>**Form RD 400-3, Notice to Contractors and Applicants</i>   |        | X         | 6               |          |               |
| 12. <i>Form RD 400-6, Compliance Statement</i>   |        | X         | 6               |          |               |
| 13. <i>Form RD 1922-7, Appraisal Report for Multi-Unit Housing</i>   | X      |           | 8               |          |               |
| 14. <i>*Proof of organization (certified copy of charter or articles of incorporation)</i>                         |        | X         | 5               |          |               |
| 15. <i>*Certified copies of bylaws or regulations</i>  |        | X         | 5               |          |               |

| ITEM  | Agency | Applicant | Docket Position | Date Due | Date Received |
|---|--------|-----------|-----------------|----------|---------------|
| 16. *List of names and addresses of officers, directors and members, and membership interests held by each  |        | X         | 5               |          |               |
| 17. *Certified copy of Loan Resolution  |        | X         | 2               |          |               |
| 18. Interim lender's commitment letter with evidence of license to do business in state, if applicable  |        | X         | 2               |          |               |
| 19. Loan Agreement or Resolution, as applicable   |        | X         | 5               |          |               |
| 20. **Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction  |        | X         | 6               |          |               |
| 21. <i>Form RD 1930-7, Multi-Family Housing Project Budget (first year)</i>   |        | X         | 3               |          |               |
| 22. <i>Form RD 1930-7, Multi-Family Housing Project Budget (typical year)</i>   |        | X         | 3               |          |               |
| 23. <i>Form RD 1940-20, Request for Environmental Information, if applicable</i>  |        | X         | 3               |          |               |
| 24. <i>Form RD 1940-22, Environmental Checklist for Categorical Exclusions, Form RD 1940-21, Environmental Assessment for Class I Actions, or Environmental Assessment for Class II Actions, or Exhibit H, RD Instruction 1940-G, Environmental Program</i> |        | X         | 3               |          |               |
| 25. Phase 1 Environmental Site Assessment   |        | X         | 8               |          |               |
| 26. <i>FEMA Form 81-93, Standard Flood Hazard Determination</i>   |        | X         | 6               |          |               |
| 27. <i>Form RD 3550-6, Notice of Special Flood Hazards, Flood Insurance Purchase Requirements, and Availability of Federal Disaster Relief Assistance.</i>  |        | X         | 6               |          |               |
| 28. Relevant information from SHPO  |        | X         | 3               |          |               |
| 29. Market feasibility documentation  |        | X         | 3               |          |               |
| 30. SAUCE input data and analysis   |        | X         | 6               |          |               |

| ITEM   | Agency | Applicant | Docket Position | Date Due | Date Received |
|--|--------|-----------|-----------------|----------|---------------|
| 31. Appraisal  |        | X         | 8               |          |               |
| 32. Management certification   |        | X         | 3               |          |               |
| 33. Management profile   |        | X         | 3               |          |               |
| 34. Management plan  |        | X         | 3               |          |               |
| 35. A preliminary title insurance commitment/binder and final title insurance policy   |        | X         | 5               |          |               |
| 36. Affirmative Fair Housing Marketing Plan  |        | X         | 3               |          |               |
| 37. Mortgage title insurance policy  |        | X         | 5               |          |               |
| 38. Copy of deed, purchase contract, or other instrument of ownership  |        | X         | 5               |          |               |
| 39. A copy of the lease to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage, if applicable |        | X         | 1               |          |               |

\* When applicant is an organization.

\*\* One copy for contractor.



**ATTACHMENT 6-B**  
**LOAN CALCULATION WORKSHEETS**





## ATTACHMENT 6-C

### GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER OF RHS'S COMMITMENT

Name and address of interim lender.

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Dear Mr./Ms:

(For organizations)

Reference is made to a request from the (applicant name) through (name of general partner or principal, and title) for interim financing from your firm to construct a housing facility at the interest rate, terms, and conditions agreed upon as reflected in the attached letter.

(For individuals)

Reference is made to a request from (name of individual) for interim financing from your firm to construct a rental housing facility at the interest rate, terms, and conditions agreed upon as reflected in the attached letter.

This letter will confirm certain understandings on behalf of the Rural Housing Service (RHS).

Final drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and RHS have determined that the conditions of loan closing can be met. RHS funds have been obligated for the project.

RHS has required the applicant to deposit \$\_\_\_\_\_ with your firm to be used before any interim loan funds or other loan or grant funds. You may first advance the applicant funds on deposit, and then advance the proceeds of the interim loan or other loan and grant funds in accordance with the terms and conditions stated in your attached letter, to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant, and RHS official.

We have scheduled the RHS loan to be closed when construction is substantially complete in accordance with the RHS-approved contract documents, drawings, and specifications, and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the RHS loan amount will be available to pay off the loan advances your lending institution has made for authorized approved purposes, including accrued interest on the RHS loan to the date of closing.

RHS cannot provide you with an unconditional letter of commitment guaranteeing RHS loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the RHS loan from being closed.

These problems can be minimized by making a thorough review of the contract documents and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that you consider making advances for partial payments to the builder based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help ensure RHS loan closing:

1. We invite you or your representatives to accompany RHS personnel during construction inspections so that at least three or four joint inspections can be made at critical points during construction, including the final inspection, to help ensure that construction is proceeding in accordance with the RHS-approved drawings and specifications.
2. RHS will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.
3. RHS will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, RHS will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or if the RHS loan applicant becomes unable or unwilling to continue with the project, RHS will attempt to provide financial assistance to any eligible applicant to purchase the completed project from your lending institution (subject to the availability of funds, our administrative procedures, and our lending requirements).
4. RHS is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after RHS loan approval and the obligation of RHS loan funds. When justified, RHS may make subsequent loans to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by RHS, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

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State Director